

Forum: International Court of Justice

Case: Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)

Student Officer: Shyam Soundararajan

Position: President Chair

Introduction:

The conflict between Israel and Palestine is one of the longest-standing conflicts and it is older than the United Nations itself. Over the course of time, a main point of conflict is the city of Jerusalem, which has been contested by both Israel and Palestine. Jerusalem is a city of major significance and has important religious, cultural, and spiritual aspects. There are many holy sites for both Jews and Arabs, making the city a hotly contested region, with both Israel and Palestine claiming Jerusalem as their capital.

While both Israel and Palestine have declared Jerusalem as their capital, the status of the city remains disputed and divided, with some countries affirming Jerusalem as the capital of Israel, while others continue to call it Palestine's capital.

On 6th December 2017, the President of the United States of America recognized Jerusalem as the capital of Israel and announced the relocation of the American Embassy in Israel from Tel Aviv to Jerusalem. The official Inauguration of the United States Embassy took place on 14th May 2018.

In response to this, the State of Palestine instituted proceedings against the United States of America before the International Court of Justice (ICJ) on grounds of the alleged violations of the Vienna Convention on Diplomatic Relations of 18 April 1961. In the application filed to the ICJ, Palestine requested the Court to “declare that the relocation, to the Holy City of Jerusalem, of the United States embassy in Israel is in breach of the Vienna Convention”. Moreover, Palestine requested the Court to “to

order the United States of America to withdraw the diplomatic mission from the Holy City of Jerusalem and to conform to the international obligations flowing from the Vienna Convention”. Finally, Palestine had also asked the Court “to order the United States of America to take all necessary steps to comply with its obligations and to refrain from taking any future measures that would violate its obligations and to provide assurances and guarantees of non-repetition of its unlawful conduct”.

Key Terms:

De facto

A term used in laws and by governments to describe practices that exist in reality, even though they are not officially recognized by laws.

De jure

A term used in laws and by governments to describe practices that are legally recognized, regardless of whether the practice exists in reality.

Gaza Strip

A self-governing Palestinian territory on the eastern coast of the Mediterranean Sea bordering Egypt on the Southwest and Israel on the east and north. The Gaza Strip and the West Bank are the only territories claimed to be a part of de jure sovereign State of Palestine.

Green Line (or 1949 Armistice border)

It refers to the Demarcation line which was set out in the 1949 Armistice Agreements between the armies of Israel and those of its neighbors (Egypt, Jordan, Lebanon and Syria) in the aftermath of the 1948 Arab-Israeli War. The border is named as a symbol of the green ink which was used by the authorities to draw the specified line on the map while the armistice discussions were going on.

Hamas

It refers to the name given to the Palestinian Sunni-Islamic fundamentalist militant organization which has both a social service and military wing. Following the 2007 Battle of Gaza, it has been the de facto governing authority of the Gaza Strip. The status of Hamas is disputed; while the European Union, Israel, and the United States have designated Hamas as a terrorist organization, other countries like China, Egypt, Iran, Norway and Russia do not consider it a terrorist organization. In 2018, the United Nations General Assembly rejected a U.S. resolution condemning Hamas as a terrorist organization.

Intifada

A key concept in contemporary Arabic language referring to rebellious responses, uprising movements and resistance activities of alienated groups against oppressive regimes and/or acts. Several events in the history of the Palestine-Israeli conflict have been referred to as Intifada.

Jerusalem Embassy Act of 1995

A law of the United States of America adopted during the 104th Congress on October 23, 1995., passing by a majority of 93 to 5 and 374 to 37 in the Senate and House of Representatives, respectively. The Act was introduced to recognize Jerusalem as the capital of the State of Israel whilst remaining to be an undivided city.

Oslo Accords

A set of agreements between the state of Israel and Palestinian Liberation Organization (PLO) signed in 1993. Oslo Accords signify the start of the Oslo process, a peace-achieving process fulfilling the “right of the Palestinian people to self-determination” and developing mediation agreements based on UN Security Council Resolutions 242 and 338.

Palestinian Liberation Organization (PLO)

An organization founded in 1964 with the purpose of the “liberation of Palestine” through armed struggle. It is known as the “sole legitimate representative of the Palestinian People” by over 100 states, including Israel following the Oslo Accords. While the PLO has recognized Israel's right to exist in peace, accepted UN Security Council resolutions 242 and 338, and subsequently rejected “violence and terrorism”, it has used violence several times, prompting the United States of America to label it as a terrorist organization.

Palestinian National Authority (PNA)

A self-governing body established in 1994 to hold jurisdiction over the Palestinian people in the Gaza Strip and the West Bank according to the Oslo Accords. This is the only official body recognized by the United Nations to represent the state of Palestine as an “Observer Member State”. It is currently under the control of the political faction “Fatah”.

Sovereign State

A political entity which is represented by only one centralized government with sovereignty over a geographic territory. As per international law, sovereign states are considered to have a stable population, a piece of land enclosed by borders, a defined structure of independent government and a capacity to have an efficient cross-cultural communication and develop international relations with other sovereign states.

West Bank

The name given to the territory captured by Jordan after the 1948 Arab-Israeli War, which was subsequently annexed in 1950 until 1967 when it was occupied by Israel during the 1967 Six-Day war. Under Israeli occupation since 1967, the area is split into 167 Palestinian "islands" under partial Palestinian National Authority civil rule, and 230 Israeli settlements into which Israeli law is "pipelined".

Overview:

Israel-Palestine Conflict

The region belonging to the modern state of Israel has been a point of contention between the Jews and the Arabs ever since the start of the 20th Century. This can be first traced to a conflict between Jews and Arabs from 1920-1948 in the British mandate of Palestine. Conflicts in this period include the Great Palestinian Revolt and the 1944–1948 Jewish insurgency in Mandatory Palestine. These conflicts later led into the Arab-Israeli War of 1948, with the invasion of the territory of British Palestine by a coalition of Arab states following Israel's declaration of independence on the 14th May, 1948. Israel emerged as the winners of the war, controlling the land allotted to them by the United Nations Partition Plan for Palestine, as well as 60% of the Arab land proposed in the plan. While the conflict ended in March 1949, tensions between both states remained high.

Following years of Egyptian-aided Palestinian attacks and increased Egyptian troops in the Sinai Peninsula, Israel launched a military strike against Egypt, in what became known as the Six Day War. This war saw Israel fight a coalition of Arab states, consisting of Egypt, Syria and Jordan. The war, between 5th and 11th June 1967, saw Israeli forces invade, capture and occupy the Sinai Peninsula, Gaza Strip, Golan Heights and the West Bank. Ever since this, the status of the West Bank as an occupied territory has been affirmed by the ICJ and the Israeli Supreme Court, and remains occupied to this day, with the exception of East Jerusalem. To date, the West Bank territory remains disputed between Israel and Palestine, leading to periodic conflicts and violence between the two states.

Following the Six Day War, there have been various bouts of Palestinian protests against Israel. Two major instances of these protests have been the First and the Second Intifada which lasted between 1987-1993 and 2000-2005, respectively. The intent of the First Intifada was to protest the Israeli occupation of the Gaza Strip and the West Bank 20 years ago in 1967; the intent of the Second Intifada was to protest the failure of the 2000 Camp David Summit. In both Intifadas, the Israeli Defensive Forces (IDF) played a vital role in suppressing the protests and uprisings.

The most recent protest ensued in 2021 following the anticipated decision of the Supreme Court of Israel regarding the case of eviction of 6 Palestinian families in Sheikh Jarrah. This led to conflict, inflicting casualties on both sides.

As one of the longest standing conflicts in modern history, there have been several attempts at reaching a peaceful solution for this issue. Peace solutions between Israel and Arab countries that have been attempted include the Geneva Conference of 1973, the 1978 Camp David Summit and the Madrid Conference of 1991.

The first major breakthrough in peace was achieved through the Oslo Accords, which took place in 1993 till 1995. The Oslo Accords were a pair of agreements between the Government of Israel and the Palestine Liberation Organization (PLO). The Oslo Accords provided Palestine a certain level of self-governance, while not going to the extent of creating a Palestinian state. Through the Oslo Accords, Israel recognised the PLO as the “representative of the Palestinian people and as a partner in negotiations”, while the PLO recognised Israel. The Oslo Accords also created a Palestinian Authority, which was given the task of governing parts of the West Bank and Gaza Strip.

Another notable peace solution proposed took place at the infamous 2000 Camp David Summit. This was held in the United States of America with the aim of finalizing the end of the Israel-Palestine Conflict; however, this agreement failed to materialize and led to the Second Intifada.

To date, no complete peaceful solution has been achieved, and tensions remain high on both sides.

USA-Palestine Conflict

A notable ally of Israel is the United States of America; it has assisted Israel ever since its independence and has engaged indirectly in conflict with Palestine. Tensions remain high between both nations.

On 6th December 2017, the United States recognised Jerusalem as the capital of Israel. With this, the then-President of the United States of America, Donald J. Trump, announced the move of the U.S Embassy in Israel to Jerusalem from Tel Aviv. While this move was welcomed by the Prime Minister of Israel, it was criticised by various countries including UK, France, Sweden and Italy. In an emergency meeting conducted by the UN Security Council, 14 out of 15 members condemned the decision; however, this motion was vetoed by the United States of America. While this move was supported and followed by some countries deciding to move their embassies to Jerusalem, it resulted in increased tensions between the USA and Palestine.

The Case

On the 28th of September, 2018, Palestine filed proceedings against the United States of America at the International Court of Justice, alleging that they violated the Vienna Convention on Diplomatic Relations of 1961 and other rules of general international law by relocating its embassy to Jerusalem. Moreover, the State of Palestine claims that Israel does not have territorial sovereignty over Jerusalem, as it is an international city, according to the United Nations Partition Plan for Palestine. In the case file, Palestine cites the fact that “no territorial acquisition resulting from the threat or use of force shall be recognized as legal” to show that Israel is forbidden from changing the status of Jerusalem, the occupied territory at hand.

On the other hand, the United States, the defendant of this case, claims that the International Court of Justice cannot entertain this case as Palestine does not have the jurisdiction to file a case in the International Court of Justice. Palestine is neither recognised as a state by the United States nor is it a Member State of the United Nations. Due to these reasons, the United States has indicated that it would not participate in the Court proceedings.

In its order dated 15th November 2018, the International Court of Justice addressed the issue brought up by the USA by stating, “Whereas the Court considers,

with reference to Article 79, paragraph 2, of its Rules, that, in the circumstances of the case, in particular in view of the fact that, according to the United States, the Court manifestly lacks jurisdiction to entertain Palestine's Application, it is necessary to resolve first of all the question of the Court's jurisdiction and that of the admissibility of the Application, and that these matters should accordingly be separately determined before any proceedings on the merits".

As of August 2021, this case is still pending at the International Court of Justice.

Major Parties and their Views:

The United States of America

On the 14th of May 1948, the United States of America became the first country to recognize the state of Israel, following its Declaration of Independence on the same day. This was a de facto recognition, with the de jure recognition happening on the 31st of January, 1949. Ever since the beginning, the USA has remained Israel's biggest economic and political ally. Since 1985, the United States has provided nearly US\$3 billion annually in grants to Israel, which has been the largest recipient of annual American aid from 1976 to 2004. Israel is also the largest cumulative recipient of aid (\$146 billion) since World War II. Beyond this, the USA also provides political support to Israel, having used its United Nations Security Council veto power 42 times against resolutions condemning Israel (The veto has only been used 83 times ever since its inception). Relations with Israel have been a very important factor in the U.S. government's Middle East foreign policy.

In line with its pro-Israel policy, the USA does not recognize the state of Palestine, but recognizes the Palestinian National Authority as the legitimate representative of the Palestinian people. While the Biden administration has announced the restoration of relations with Palestine and the current Secretary of State

announced that the USA would reopen its Palestinian consulate in Jerusalem, both countries do not maintain any diplomatic relations as of August 2018.

On 23rd October 1995, the 104th United States Congress passed the Jerusalem Embassy Act, recognizing Jerusalem as the capital of the State of Israel and calling for Jerusalem to remain as an undivided city. Furthermore, this act set aside funds for the relocation of the US Embassy in Israel to Jerusalem. While the deadline for the relocation was set to May 31, 1999, Presidents Bill Clinton, George W. Bush and Barack Obama signed biannual waivers to delay the embassy move until further notice, citing national security concerns. On 6th December 2017, President Donald J. Trump recognised Jerusalem as the capital of Israel, ordering the move of the embassy from Tel Aviv to Jerusalem. The USA voted against the UN General Assembly resolution ES-10/L.22, which called on countries to avoid setting up diplomatic missions in Jerusalem.

The U.S. Embassy in Jerusalem opened up on 14th May 2018. In mid-October 2018, the United States Secretary of State Mike Pompeo announced that the embassy in Jerusalem would be merging with the US Consulate-General in Jerusalem into a single mission.

Palestine

The state of Palestine claims Jerusalem as its capital, despite its disputed status. Due to this, it has denounced the USA's move to shift the location of its embassy from Tel Aviv to Jerusalem. It opposes the Israeli occupation and does not have any diplomatic relations with the United States. While tensions with the USA and Israel have been high, the move to shift the embassy's location has sparked protests across Palestine. On the opening day of the U.S. embassy in Jerusalem, there were mass protests on the Gaza border, leading to 57 Palestinian deaths on that day.

The state of Palestine believes that the USA's move is unlawful as it violates the Vienna Convention on Diplomatic Relations of 1961, specifically invoking Article

1 of the Optional Protocol to the Vienna Convention concerning the Compulsory Settlement of Disputes.

Israel

Since the 1980 Jerusalem Law, Israel has declared Jerusalem as its capital. According to a 1999 statement made by the Ministry of Foreign Affairs of Israel, “there is no basis in international law for the position supporting a status of 'corpus separatum' for the city of Jerusalem.” With Israel being a key ally of the United States of America, it agrees and has a unified view on this issue. Israel has welcomed the move of the United States Embassy from Tel Aviv to Jerusalem, with then-Prime Minister Benjamin Netanyahu supporting and praising the United States throughout the process. On the opening day of the U.S. Embassy in Jerusalem, Israeli forces faced mass protests from Palestinians in the Gaza border, prompting them to fire their weapons, which killed 57 protestors injured 2700 that day.

United Kingdom

Despite the United Kingdom being a key ally of the United States of America, it maintains a slightly different stance on this issue. The United Kingdom believes that no state has complete sovereignty over the city of Jerusalem, leading to them disagreeing with the U.S. over its move to shift the location of the embassy to Jerusalem. The UK maintains diplomatic relations with both Israel and Palestine, and it has considered recognizing Palestine as a state if it maintains the non-member observer status at the United Nations.

Iran

The Islamic Republic of Iran has remained a strong ally of Palestine and is a staunch enemy of both the United States of America and Israel. It has rejected the move of the United States to move its embassy to Jerusalem. Following the UN GA Resolution, the Iranian Minister of Foreign Affairs termed the vote as a “resounding global no” to the “thuggish intimidation” of the Trump Administration. On 27

December, the Iranian Parliament passed a bill, recognizing Jerusalem as the capital of Palestine.

Russia

The Russian Federation is a key geopolitical power in the Middle East region. It holds a stance vastly different from its Western compatriots. It holds that West Jerusalem is the capital of Israel, while East Jerusalem is the capital of Palestine. Despite this, the Russian Federation opposes the move of the U.S. embassy to Jerusalem; to date, it continues to locate its embassy in Tel Aviv.

Organization of Islamic Cooperation

The OIC supports a two-state solution to the Israeli-Palestinian conflict and has been a strong advocate against the recognition of Jerusalem as the capital of Israel. Following USA's move to shift its embassy, the OIC declared East Jerusalem as the capital of the State of Palestine and invited "all countries to recognize the State of Palestine and East Jerusalem as its occupied capital on 13 December 2017. While the OIC supports a two-state solution, it has not neither referenced West Jerusalem nor has it mentioned Jerusalem as 'corpus separatum'.

Timeline:

Date	Event	Outcome
2 nd November, 1917	The Balfour Declaration	A public statement issued by the British government announcing support for a "national home for the Jewish people" in Palestine. This effectively addressed the demands of the Zionist movement, paving way for the creation of a Jewish state.
29 th November, 1947	United Nations Partition Plan for Palestine	The United Nations General Assembly adopted Resolution Number 181 (II), recommending the creation of an independent Arab and Jewish state following the end of the British Mandate.

		This resolution also recommended setting up a Special international Regime for Jerusalem.
14 th May, 1948	The Israeli Declaration of Independence	Israel declares independence, coming into effect after the termination of the British Mandate. The provisional government of Israel is recognized as the de facto government of Israel by U.S. President Harry S. Truman on the same day.
15 th May, 1948	1948 Arab-Israeli War	The 1948 Arab-Israeli War is fought by Israel and a coalition of Arab states. Israel ends up winning the war, getting to keep all the land allotted to it by the UN Partition Plan, as well as 60% of the area of the Arab State.
18 th April, 1961	The Vienna Convention on Diplomatic Relations	The Vienna Convention on Diplomatic Relations was signed by 192 state parties and/or members, including the USA and the State of Palestine.
5 th June, 1967	The Six-Day War (or the 1967 Arab–Israeli War)	The Six-Day war is fought by Israel and a coalition of Arab states. Israel ends up winning the war. During the war, Israel invades, captures and occupies the Sinai Peninsula & Gaza Strip from Egypt, the Golan Heights from Syria and the West Bank from Jordan.
8 th December, 1987	First Intifada	The beginning of the First Intifada, which saw a sustained series of Palestinian protests against the Israeli occupation of the West Bank and the Gaza Strip since the Six-Day War. This Intifada lasted until 1993 and was suppressed by the Israeli Defense Forces (IDF). This Intifada witnessed nearly 2000 Palestinian deaths and 300 Israeli deaths.

30 th October, 1991	Madrid Conference of 1991	One of the first attempts at achieving peace between the state of Israel and Palestine. This conference was hosted by Spain and co-sponsored by the United States and the Soviet Union. This conference remains known for acting as an opening forum for the parties involved.
13 th September, 1993	The Oslo Accords	The Oslo Accords are signed in Washington D.C. This accord was based on UNSC resolutions 242 and 338. It led to the creation of a Palestinian Authority in-charge of governing parts of the West Bank and Gaza Strip. It also led to Israel recognizing the Palestinian Liberation Organization as representative of the Palestinian people and vice-versa.
23 rd October, 1995	The Jerusalem Embassy Act of 1995	This act was passed by the 104 th Congress of the USA and it recognized Jerusalem as the capital of the State of Israel, while also allocating funds for the relocation of the U.S. Embassy from Tel Aviv to Jerusalem by May 31, 1999. However, this relocation did not materialize until 6 th December 2017 due to the U.S. Presidents signing biannual waivers.
11 th July, 2000	2000 Camp David Summit	This marked the beginning of the summit meeting held in Camp David, MD, USA. It was held to finalize the agreement between the states of Israel and Palestine and complete the Oslo peace process started by the Oslo Accords. However, the summit ended on 25 th July without any agreement reached.
28 th September, 2005	Second Intifada	The beginning of the Second Intifada, which saw a sustained series of Palestinian

		protests, which was caused by the failure to reach an agreement between the Israeli and Palestinian sides in the 2000 Camp David Summit. This Intifada lasted until the Sharm el-Sheikh Summit on 8 th February 2005 and witnessed nearly 3300 Palestinian and 1000 Israeli deaths.
10 th June, 2007	The Battle of Gaza	This conflict between Fatah and Hamas took place in the Gaza Strip. Hamas emerged as victors in this conflict and took control of the Gaza Strip, which it runs till date.
6 th December, 2017	U.S. Recognition of Jerusalem	The then-President Donald J. Trump announced the recognition of Jerusalem as the capital of Israel, and ordered the relocation of the U.S. Embassy in Israel from Tel Aviv to Israel.
14 th May, 2018	Opening of the U.S. Embassy in Jerusalem	The U.S. Embassy in Jerusalem opens. On this day, there were mass protests on the Gaza border, leading to conflict and 57 Palestinian deaths.
28 th September 2019	Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)	The state of Palestine files an application in the International Court of Justice against the U.S. on the matter of the relocation of the U.S. Embassy to Jerusalem.

U.N. Resolutions:

- Resolution 181 (II). Future government of Palestine, 29 November 1947 (A/RES/181(M))
- UN General Assembly, Measures taken by Israel to change the status of the City of Jerusalem, 4 July 1967 (A/RES/2253)
- Resolution 9 of the Security Council of the United Nations, 15 October 1946 (S/RES/9)

- Resolution 303 (IV), Palestine: Question of an international regime for the Jerusalem area and the protection of the Holy Places, 9 December 1949 (A/RES/303(IV))
- Resolution 242 (1967), Question of Palestine, 22 November 1967 (S/RES/242)
- Resolution 252 (1968), Question of Palestine, 21 May 1968 (S/RES/252)
- Resolution 338 (1973), Cease-Fire in the Middle East, 22 October 1973 (S/RES/338)
- Resolution 478 (1980), Question of Palestine, 20 August 1980 (S/RES/478)
- Resolution 1860 (2009), The situation in the Middle East, including the Palestinian question, 9 January 2009 (S/2009/1860)
- Resolution 2334 (2016), The situation in the Middle East, 23 December 2016 (S/RES/2334)
- United Nations General Assembly resolution ES-10/L.22, Status of Jerusalem, 21 December 2017 (A/RES/ES-10/L.22)

Bibliography:

Cour Internationale De Justice - International Court of Justice | Cour Internationale De Justice, [icj-cij.org/](https://www.icj-cij.org/).

The Editors of Encyclopaedia Britannica. "Arab-Israeli Wars." Encyclopedia Britannica, 17 Jan. 2019, www.britannica.com/event/Arab-Israeli-wars.

"General Assembly Resolutions." United Nations, United Nations, www.un.org/en/sections/documents/general-assembly-resolutions/index.html.

Gordon, Philip H. "No Way Out: The Essential U.S. Role in the Middle East." Brookings, Brookings, 28 July 2016, www.brookings.edu/articles/no-way-out-the-essential-u-s-role-in-the-middle-east/.

“Israeli-Palestinian Conflict | Global Conflict Tracker.” Council on Foreign Relations, Council on Foreign Relations,

www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict.

Just Vision, Oslo Process, Archived on 24 December 2013 at the Wayback Machine.

<https://web.archive.org/web/20131224103107/http://www.justvision.org/glossary/oslo-process>

“Palestine vs USA.” Thinc.,

www.thinc.info/palestine-vs-usa-the-icj-should-not-allow-itself-to-be-used-in-lawfare-against-israel/.

Schmitt, Michael, and Jelena Pejic. International Law and Armed Conflicts: Exploring the Faultlines. Martinus Nijhoff, 2007.

"Vienna Convention on Diplomatic Relations". United Nations Treaty Collection.

United Nations.

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&clang=_en

“What Is U.S. Policy on the Israeli-Palestinian Conflict?” Council on Foreign Relations, Council on Foreign Relations,

www.cfr.org/background/what-us-policy-israeli-palestinian-conflict.